

Translation of Legal Texts between Arabic and English: The Case Study of Marriage Contracts

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Abstract

Over decades, there used to be a number of studies on Legal translation since it was one of the most challenging issues for translators and it still a critical and authoritative translation produced by legal bodies. Actually, translating legal texts might raise some problems in translation pertaining to the differences between the Source and Target Texts. Thus, it can result in a certain amount of ambiguity with respect to the legal texts, as it belongs to people's beliefs and cultures. This study investigates the quality of the translated message from Arabic into English. Hence, the focus is on the changes of the message in the translation process that is attributable to functional & verbal equivalence in Arabic and English as well. The study will rely on Baker's theory (1992) to examine whether the semantic changes affect the quality of the translated message in terms of equivalence, along with Newmark methods (1988) in translation. The study will analyse as well five different forms of marriage contracts translated by different native translators in the Arabic as a source language and their correspondence into English as a target language, in order to identify the cultural and linguistic equivalence by using functional comparisons between the Arabic and English legal systems.

Keywords: Marriage Contracts, Translation Shift, Problems of Equivalence, Semantic Change.

Introduction

Translation is the gateway for understanding and dealing with others and their civilizations. Most translation scholars and linguists agree that the translation process is achieved as a communicative process from a foreign language to the mother tongue, so translation considered a unique linguistic device that has the very important task of conveying the sense of the text from one language to another language. This is what Newmark calls "translation service". There have been lots of debates on translation methods; some scholars preferred word- for- word whereas others prefer sense- for- sense. Meanwhile, mistakes in this field of translation may be disastrous. It is a disaster to make mistakes in translation in general. For instance, mistakes in chemical texts can cause a fatal poisoning or a terrible explosion, whereas, in legal translation they can unlawfully make a defendant lose his expensive law-suit. In aeronautics they may bring a plane down from the sky on people's heads. Finally, in interpretation, the poor performance of an interpreter can also spoil the proceedings of a whole international conference.

The legal texts are considered more complicated than others due to the heavy responsibility they carry and to the scanty background of tough legal terms and their bound nature system Coulthard, Johnson (2010). The problem is due to the varieties of word synonyms in the legal Arabic system which have no equivalence in the English system in terms of marriage contracts, such as; الخ , مهر, شبكة, صداق. الخ; Mahr, Shabkah, Sadaq- (dowry), whereas, all of these examples attributed and affected by the culture and tradition of the Arabic language.

However, a number of professional translators encounter several challenges while trying to find out a matchable equivalent in the English legal system. According to Baker (1992), the most common problems that legal translators face during the rendering of a legal text are the lack of verbal / functional equivalence in the target language. Accordingly, Amer (2010) states that, the unfamiliarity of some translators with the modern theories and strategies of translation leads to problems and mistakes in translation. Accordingly the modern definition of legal translation is that a translation between two different languages, expressed in two different legal systems, this means that the legal term in the first language is limited to the legal system of that language, and that cannot be understood or thus translated only through the legal system, thus, the translator shall translate the legal terms from the source language and transferred them functionally equivalent in the target language (Cao, 2007). Hence, from the above definition we can state the LAW definition as: a set of codified provisions, lay down, issued by the legislature and have binding effect to the people so that the offender citizen shall be punished whenever committing sin. So, the word "law" refers to the different classifications in the legal domain. According to Vermeer (1984:98), the translation activity has various cultural and specific behaviors and there are differences between a priori knowledge of the recipients of the source culture and the priori knowledge of the recipients of the target culture, considering that the translator must not only be bilingual or multilingual, but also be bi - or even multicultural, working as a mediator between two cultures and the differences of those cultures should be clear. Eventually, he is "an expert in intercultural communication.

Literature Review

According to Newmark (1991: 27), "Translation is a skill of replacing a message or a text, in one language by a message or a text in another language". Also, Nida and Taber define the translation process as "a reproducing process from the receptor language (SL) to the sender language (TL) with carrying the same natural equivalence for both languages" (1965:12, 82). Also Halliday (2001) mentioned in his book that "the equivalent of the text among the source language and target language is to find an equivalent at the level of the entire text". However, legal texts are often treated as a distinctive type of language for special purposes (Taylor 1998). Clarity is sought in this type of texts because legal texts, such as charters, contracts, and treaties, etc., are supposed to defend the rights of a person / a group or to impose obligations, besides many other functions collectively known as 'legislations' as well. The Legal texts are to manage and monitor the human's conduct, the reason for which these documents should be granted the highest possible degree of clarity and adequacy.

Newmark (1981) discusses, with respect to the translation operation, the first approach with the text. According to him, it is not safe in most cases, to translate more than a sentence unless the first two paragraphs are read. Besides, translators should do more preliminary work as far as the text is difficult linguistically and culturally. A text should be translated by sentences rather than by words, as literally or closely as possible, as much as the translator can. Grammatically-bound words, jargon words and modal particles might not be translated for good reasons.

As for Vermeer (1984:98), the translation activity has various cultural specific behaviours and there are divergences between a priori knowledge of the recipients of the source culture and the priori knowledge of the recipients of target culture. It is important to note that, being bilingual or multilingual only is not enough; a translator has to be as well bicultural or even multicultural in order to produce a neat translation, and argues that any translation is determined by its purpose and an action exists only if it pursues a certain goal. Vermeer elaborates saying that the legal norms should be taken into consideration while the translator is executing his mission. Thus, he should select the most appropriate translation strategy in order to translate the legal text.

Nida (1964) suggests two types of equivalence for a precise translation; the formal and dynamic equivalence. Formal equivalence, focuses on the message itself, in both its form and content, whereas, the dynamic equivalence, is based on the principle of equivalent effect. Newmark (1981: 47) suggested in his book that, when the translator deals with legal documents such as international covenant, agreement, contracts etc., all his focus should be on the communicative approach, which is the way of conveying the same message in the target texts.

Stoddart (2000) says there are bound elements of translation theories behind the different concepts of equivalence which means that the conveyed message of the target texts is affected by the theory used in the source texts. Many scholars, linguists, theorists and translators such as Vinay, Darbelnet, Taber, Nida, Newmark, House and Baker, dedicated their works to the role of equivalence in translation. Nida and Taber (1994) highlighted the formal and dynamic equivalence and their changeable dual clash was modified many times. Vinay and Darbelnet

(1995) emphasized that translation is an equivalence oriented study and equivalence is the perfect approach to face the translation problems and decrease the error ratio of mismatching. House (1977), applied her theory on translation taxonomy and confirmed that equivalence must be involved in the translation process and could eventually be either overt or covert.

Theoretical Framework

According to Mona Baker book (1992), 'In other words', the essential role of translation equivalence was described. In her book (1992-2006) she shows some relevant translation problems and outlines the five categories of translation equivalence that any translator should be familiar with, besides the way of employing and utilizing them in the text. These categories are; (a) equivalence at the word level, above the word level, the context equivalence; grammatical, the textual equivalence and finally the pragmatic equivalence.

Newmark (1988), in this theory defines and determines all methods of valid translation that the translator has to follow according to the genre of his text. He divides the translation process in terms of system and cultural importance, into two main polars, source language polar SL and target language polar TL. So, source language highlights on: a) Word-for-word translation, b) Literal translation, c) Faithful translation, d) Semantic translation. Then target language highlights on: a) Adaptation, b) Free translation, c) Idiomatic translation, h) Communicative translation. Newmark argues that translation methods are relevant to the examination of the entire text (Newmark P. 1988:45).

Methodology And Data Analysis

The study data is based on five written texts of marriage contract taken from a total of 8 contracts found in Gaza, taken from Gaza Shariah Court. The selection criteria were based on the significant content of contracts and abundant usage of more than 6 Arabic idioms in each contract. The data were taken from Gaza strip during the period of 2010 to 2012, and translated from Arabic into English by a professional office of translation service in Gaza. It is important to mention that Arabic is the source text and English is the target text. The study analysis has employed a contrastive methodology of the ST data with the TT data in semantic term as envisioned by Newmark (1988) and Baker (1992).

Data Analysis

- انكحتك موكلتي ابنتي علي مهر معجل وقدره ومهر مؤجل وقدره (Contract text)
- I have given to you my daughter in marriage for down payment dowry ofand deferred dowry estimated to. (E. translation)
- I marry you my daughter on dowry prepaid estimated to... and dowry delayed estimated to. (literal translation)

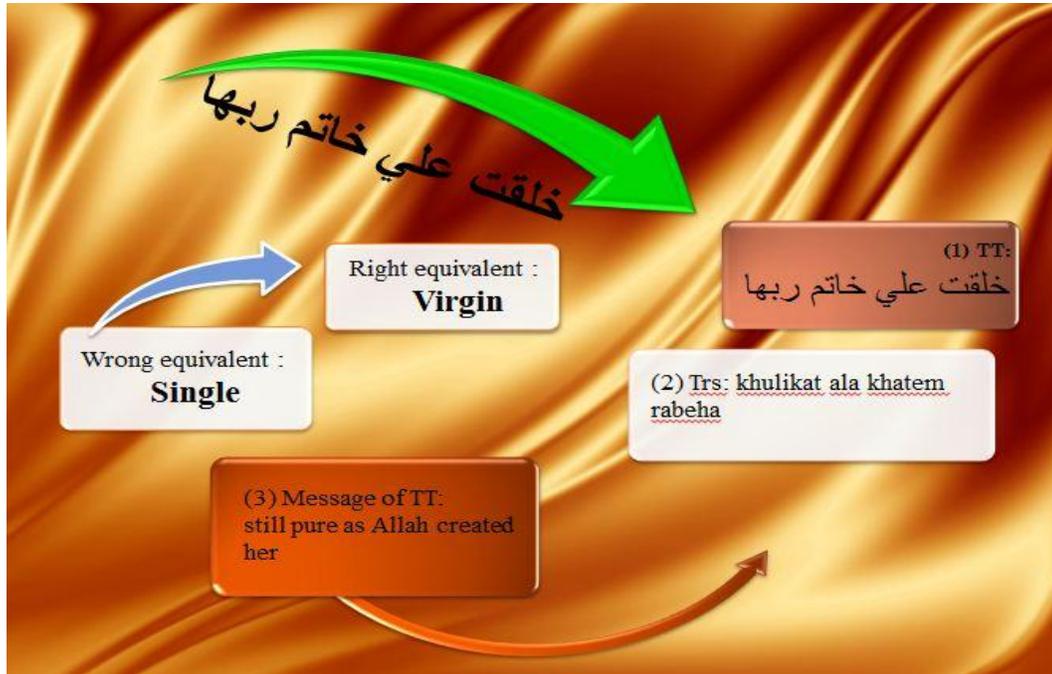
Observe the data in (a) and (b) and (c) We are concerned with the underlined sentences. It is noted that, the Arabic phrase مهر معجل وقدره is translated into English as it is shown in data

(b) “a dowry down payment” which does not give the same meaning as in (a). In fact, the word ‘dowry’ in English means the money or estate that a woman brings to her groom as endowment or devotion, in contrast with the Arabic word "مهر" or as it known among Arab translators as ‘Mahr’ which means a mandatory required amount of money which paid by the groom to the bride before the ceremony of wedding. In other words, the meaning of ‘Mahr’ or مهر in Arabic is the amount of payment which is have to be paid by the man to his wife before ceremonies, in contrast with the word *dowry* in English, which required the payment to be done by woman to her husband. So the use of the word ‘*dowry*’ in the English system is not an equivalent term for the word ‘*Mahr*’. In the Arabic or Islamic system, in fact, the most familiar way of translating the Arabic term مهر is to keep it as it is transcribing it in Arabic ‘*Mahr*’.

- a. اتفق الطرفان على صداق قدرة الف دينار (Contract text)
- b. The two parties agreed on a cash dowry of thousand dinars. (E. translation)
- c. Agreed the two parties on dowry cash of (literal translation)

As observed in (a) and (b) the underlined phrases refer to different definitions and word orders between Arabic and English. The Arabic term in line (a) "صداق" is attributable to the term “*Mahr*” which is considered as a requirement to complete the marriage. *Mahr* is given to the bride as a kind of her appreciation and respect; the man should give a wedding gift or dowry to the bride, and she can use it as she wants. It is important to note that it is not allowed for her husband or her family to enjoy part of her dowry. Here the word *dowry* doesn’t give the same meaning in English as in (b) ‘*a cash dowry*’. Furthermore, the English term *cash dowry* gives another meaning, and is only used in some cases just to give a closer meaning or clarification to the word *Mahr*. In addition to that, the explanation of the English word should be elaborated in the margin. Therefore, regarding what have been shown above, the researcher discovers that, the divergence of meaning, and the lack of the English equivalent for such a word system are related to the semantic changes between the Arabic and English subsystem, which means that the use the word *dowry* in the English marriage contract is wrong and sometimes could be confusing to the translator.

- a. خلقت علي خاتم ربها (Contract text)
- b. Still *single* as ALLAH created her. (E. translation)
- c. Still *virgin* as God created her (literal translation)

Table 1. *The illustration below shows some explanation.*

It is noted that the Arabic phrase *خالقت علي خاتم ربها* gives a dual meaning in English: "*created on the ring of her god*" or *still single as God created her*. Obviously the two literary translations do not give the exact meaning which is attributable to cultural and linguistic variation. The correct translation is "*still virgin as ALLAH created her*", which is more common in the Islamic discourse /interactions. There is a major divergence between "*still single as God created her*" and "*still virgin as ALLAH created her*" from a religious point view; the meaning of *single* is different from the word *virgin* in the religious text. In another context, the girl could be *single* but that does not mean she is still *virgin*, which means that she could have had a sexual interaction before marriage and that is illegal in Islam. Indeed, she is still single but not *virgin*. *Here the intended meaning is the virgin one who is never been touched or had any interaction with men.*

All the great literary translations should carry out with the implicit knowledge of the methods of translation as described in Newmark theory (1988). Also as Gide's preface to his translation of Hamlet clearly shows, one cannot help wondering, however, if the reason the Americans refused to take the League of Nations seriously was not because many of their documents were unmodulated and un-adapted renderings of original French texts, just as the

“sabir atlantique” has its roots in ill-digested translations of Anglo-American originals. Here, we touch upon an extremely serious problem, which, unfortunately, lack of space prevents us from discussing further, that of intellectual, cultural, and linguistic changes, which over time can be effected by important documents, school textbooks, journals, film dialogues, etc., written by translators who are either unable to or who dare not venture into the world of oblique translations. The following examples illustrate the differences of equivalence in translation between Arabic and English in the legal and colloquial translation.

English Equivalence of Arabic sentences in legal text:

(1)

- a. لا اسمح لك بحضور الجلسة
- b. I will not allow you to attend this session *colloquial sentence*
- c. You don't have permission to attend this session *colloquial*
- d. You can't attend this session *colloquial*
- e. You may not attend this session (*legal sentence*)

(2)

- a. كل المدرسين يجب ان يلتزموا بقانون الطوارئ
- b. All teachers must obligate to the emergency law *colloquial*
- c. All teachers shall obligate to the emergency law (*legal*)
- d.

(3)

- a. لا يجوز لك ان تدخن في هذه الندوة
- b. You cannot smoke in this symposium *colloquial*
- c. You may not smoke in this symposium (*legal*)

The previous examples demonstrate that, the literal translation of Arabic legal sentences into English is a very crucial matter, due to that the colloquial meaning differs from the legal sense, which means; in the first example (1) the translation of Arabic word “لا اسمح” into ‘won't allow or cannot allow or even have no permission’ in English does not carry the same legal sense as Arabic, due to the English equivalent of “لا اسمح” is ‘may not’ in English. The other two example in (2, 3) express that, the English equivalent of ‘obligation’ in the previous Arabic legal sentences are “shall and may not” but not “must or cannot” since the later does not convey the same message as in Arabic. As a result of that, using literal translation method in translating these sentences is not a good strategy, in other word, the functional translation method should be

taken into consideration in translating such texts. Functional translation is in some sense way better than the literal translation, which makes it easier to express crucial equivalent of the other language.

6. Findings

Translating the legal term from one legal system to another such as the Arabic and the English reveals some equivocal and oblique translation. The study reveals that every language has its certain terminology, and that exact translations of terms and the fact of matching the legal concept is sometimes impossible. In many cases a perfectly qualified translator or magistrate may not always be able to provide a correct translation for such terms.

For example: translating a term such as (examining magistrate) into Arabic, which is used in more than one legal system, is complicated. For instance, the word "magistrate" in all European languages means "judiciary man" رجل القضاء. The word is a relatively common use in the judicial system. But in the English legal system it's a "Judicial officer who is authorized to investigate research and examine the legal matters. On the other hand, the Arabic legal system such as the Moroccan legal system calls it 'Investigation Judge' قاضي التحقيق. In the Tunisian legal system it is called Magistrate of Investigation, حاكم التحقيق, and in the Lebanese legal system they call it as Forensic investigator. "المحقق العدلي". However, in the Kingdom of Saudi Arabia the synonyms of this term is Bureau of Investigation "هيئة التحقيق" due to the fact that the Saudi Arabia judiciary system is voided from the position of examining magistrate, so the translator is supposed to search tirelessly for the appropriate term of functional equivalent. For instance: the functional equivalent of the English legal term (defendant) in Arabic is المدعى عليه 'offender' but it is not 'complained of' "المشكومنه", or an 'opponent of' "الخصم". All these synonyms do not convey the same Arabic message. In spite of that, all these lexical words indicate the meaning of "defendant" in English but do not give functionally the same equivalence to Arabic.

The study shows that Arabic is a governed language due to the use of many orders especially the 'semantic governed. The translator adopts mixed techniques by translating the English source text with its equivalent into Arabic, besides, by adding other lexical words which show Arabic language a preservative language, since there are two explanations that appeared together in the same text, unlike the English text, which seems to be vacant of this type of juxtaposition. The study divulges the problematic of translation, referential equivocal from English to Arabic due to the fact that each language has its own nature. Arabic is a cogent force, it is simple, attractive and gets the point across in as logically as possible. Although, the Arabic

structure is less complex than French and German which are grammatically more demanding than the English language. Arabic is more flexible than English for instance; the Arabic sentence can sometimes be built with no subject, and allows both Verb Subject Object and Subject Verb Object sentence structures, unlike the English sentence.

Conclusion

Long convinced that legal translation has to be literal, translators and linguists frequently focus their attention on terminological issues. To develop translation competence, translators need instructions in terms of translation theory. Legal translators in Arabic can benefit from the translation training that focuses on the application of pragmatics, which is a relatively a modern science, to legal translation. Translation competence presupposes not only in-depth knowledge of legal terminology, but also thorough understanding of the communicative legal function of such texts. The paper has shown that current trends of translator training, such as functional theories, are more effective than training approaches used almost two decades ago. Being exposed to and aware of modern approaches to translation help translators emphasize more on the communicative and functional nature of legal translation.

Consequently, they will be able to focus on "particular instantiations of language use, in specific texts and contexts" (Colina 2002, 6). Such approaches can effectively bridge the gap between academic and professional worlds of translation.

Vinay (1995) observed the equivalence-oriented translation as an operation that "replicates the same situation as in the original, while using completely different wording" (p. 342) (ibid). Equivalence is the perfect technique when the translator is dealing with idioms, proverbs, clichés, nominal or adjectival phrases and the onomatopoeia of animal sounds. Again, Vinay and Darbelnet assert that the equivalent expressions between language pairs can be granted only if we get them as a list in a bilingual thesaurus as 'full equivalents' (p. 255). They conclude by declaring that the need for creating equivalences arises from the situation, and it is in the situation of the S.L text that translators have to look for a solution. (p. 255).

Legal translation differs from other types of translation in two basic components: the legal system and the term associated with that system, thus understanding the legal term and its translation into another language depends on the understanding of its locus in the legal system to which it belongs. For instance, the Arabic language has some words which have the same lexical structure, same phoneme and morpheme but different meaning due to the legal system and the terms followed by that system. This means that the translator can only translate the legal term into the TL by understanding its position in the legal system of the SL. Legal translators should

add one more skill to their linguistics and translation skills which is the comparative skill between two legal systems: the legal system of SL and the legal system of TL.

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Appendixes

A

عقد زواج

المحكمة الشرعية في

١. تاريخ العقد في

٢. المكان الذي جرى فيه العقد

الاسم الكامل	البلد	مكان الإقامة	العمر	الجنسية	الصفة
الزوج-الرجل البالغ-العقل-الأعزب					
الزوجة-البنات-بكر/ ثيب البقعة المعلقة					
٤. مستندات تحقق السن وعدم الموانع					
٥. المهر ونوعه					
المسجل					
المؤجل					
توقيع المهر					
٦. كيفية دفع المهر					
٧. الموثقان للعقد					
٨. شروط أحد الزوجين الخاصة					
٩. شهود العقد والوكالة والتعريف					
١٠. التكلفة على الشروط					
١١. موافقة الوالي أو إذن المحكمة					
١٢. صيغة العقد : قال وكبيل الزوجة رافعا مخالطاً للزوج المذكور نفسه زوجته وكفحتك موكتسي ابنتي... على مهر مقرر... وتوابعه المذكورة ومهر مؤجل قدره					
فاجاب الزوج المذكور فوراً وأنا قبلت ورضيت بزواجها وتكادها لنفسي على الشهرين المذكورين وتوابعهما.					
لنا					
مأثون عقد زواج في					
قد اجريت هذا العقد على قرجه المنفصل أعلاه					
بعد التحقق من استكمال الشروط وعدم الموانع.					
توقيع المأثون					
شهود التعريف والوكالة الخاصة الزوج أو وكيله					
الزوجة أو وكيلها					
تطبيق على الشروط					
تصديق المحكمة					

Palestinian National Authority
Judicial authority
Gaza Shariah Court
Marriage Contract

The Religious Court of:

- 1) Date of contract
- 2) Place of contract
- 3)

Full Name:

The male spouse, a bachelor/married man of legal age and of sound mind

The female spouse, a virgin/non-virgin of legal age and of sound mind

Town:

Place of Residence:

Age:

Nationality

Profession:

- 4)

Documents of Age Verification and Eligibility:

- 5)

Amount and type of Dowry:

Down-Payment:

Deferred Payment:

Extras:

- 6) Method of Payment;
- 7) Contract initiators;
- 8) Special Conditions by either spouse;
- 9) Witnesses of Contract, Representative and Identification
- 10) Condition Fulfillment Indemnity:

II) Approval of Guardian or Permission of Court.

II2) Contract Formula: The representative for the female spouse (her father) said, addressing the aforementioned male spouse, "I have given my daughter... to you in marriage for a dowry he down payment of which is The extras of which are mentioned above and the deferred payment for which is The male spouse immediately replied, "I accept your daughter in marriage and confirm the dowry's down payment, deferred payment and extras stipulated above."

L....., the register authorized to perform marriages in having ascertained that the conditions have been fully met, and that eligibility is established, have executed this contract in the manner detailed above.

Signature of the Authorized Registrar:

Identification and Representation Witnesses

Male Spouse or Representative

Female Spouse or Representative

Guarantor for Implementation of Conditions

Endorsement of the Court: